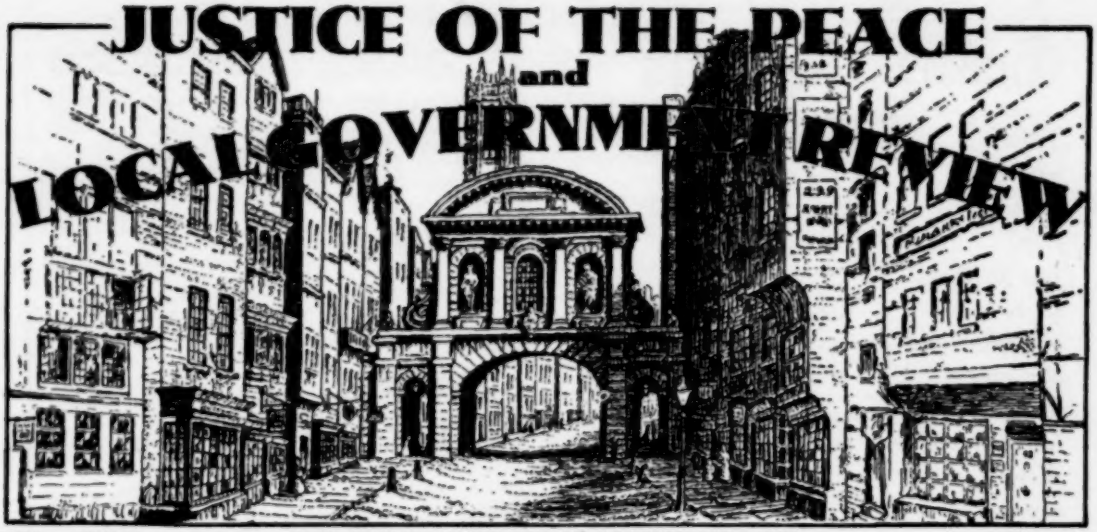

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BUT MANY.....

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BOROUGH OF CHATHAM

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APPLICATIONS are invited for the post of Committee Clerk in Grade A.P.T. II in the Town Clerk's department.

Full particulars of the appointmem can be obtained from the undersigned by whom applications (no forms issued) must be received not later than March 27, 1951.

Housing accommodation available.

ROWLAND NEWNES,
Town Clerk.

Town Hall,
Chatham, Kent.
March 3, 1951.

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Experience in conveyancing (including compulsory acquisition) is essential. Local government experience and that of county and magistrates' courts will be an advantage. Applications will be considered from persons awaiting the result of the March Final Examination of the Law Society.

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The appointment will be subject to : (*a*) one month's notice on either side, (*b*) the National Conditions of Service, (*c*) the Local Government Superannuation Act, 1937, and (*d*) the successful candidate passing a medical examination.

Applications, stating age, qualifications and experience, enclosing one copy of testimonial and giving the names of two persons to whom reference may be made, must reach the undersigned not later than Monday, April 2, 1951.

Canvassing will disqualify.

W. B. MURGATROYD,
Town Clerk.

Town Clerk's Office,
St. Peter's Street,
St. Albans.

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(2) Female Clerk/Shorthand Typist—Salary rising to £270 per annum, commencing salary to be determined according to age and experience.

The posts are not at present superannuable, but will become so in due course.

Application forms and conditions of service may be obtained from the undersigned to whom completed applications must be returned not later than March 27, 1951.

W. HUGH JONES,
Clerk of the Peace.

County Buildings,
Mold.

GIPPING RURAL DISTRICT COUNCIL

Appointment of Clerk to the Council

APPLICATIONS are invited for the appointment of a person suitably qualified and an admitted solicitor, preferably with experience of Local Government Administration, for the office of whole-time Clerk and Solicitor to the Council. The salary will be in accordance with the recommendations of the Joint Negotiating Committee for a population within the 15,000-20,000 scale.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment is terminable by three months' notice in writing on either side. Housing accommodation is available.

Applications, stating age, whether married, particulars of education, past and present appointments, general experience, present salary, and must state whether to their knowledge they are related to any member or senior officer of the Council, and together with the names of three persons to whom reference may be made, should be addressed to the undersigned on or before March 30, 1951, and endorsed "Appointment of Clerk to the Council."

R. H. K. WICKHAM,
Clerk to the Council.

Council Offices,
Needham Market,
Nr. Ipswich,
Suffolk.
March 9, 1951.

TRANSLATIONS

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NOTTINGHAMSHIRE

Appointment of Male Probation Officer

NOTTINGHAMSHIRE Combined Probation Committee invite applications for the appointment of full-time Male Probation Officer, at a salary in accordance with the Probation Rules, 1949, as amended.

Forms of application with conditions of appointment may be obtained from my office and completed forms must be received by me not later than March 24, 1951.

K. TWEEDALE MEABY,
Clerk of the Peace.

Shire Hall,
Nottingham.

NEW FOREST RURAL DISTRICT COUNCIL

Deputy Clerk of the Council

APPLICATIONS are invited from Solicitors with experience of Local Government Law and Administration for the above appointment within A.P.T. Grades IX and X (£750/£1,000), commencing salary to be fixed according to experience and qualifications of the successful applicant. The salary is an inclusive one, and any emoluments of office must be paid into the Council's account.

The person appointed will be required to carry out such duties as may from time to time be assigned to him, and must not accept any appointments or engage in private practice.

The appointment is subject to (*a*) the Superannuation Act, 1937, (*b*) the National Scheme of Conditions of Service, and (*c*) termination by three months' notice on either side.

Housing accommodation will be available to the successful applicant. Canvassing, either directly or indirectly, will disqualify prospective applicants. It would be of assistance to the appropriate Committee, if applicants so wish, to send not more than ten copies of their applications.

Applications (endorsed "Deputy Clerk"), giving full details of age, experience and qualifications, and the date when duties could be commenced if appointed, together with copies of three recent testimonials, should reach the undersigned by Friday, March 23, 1951.

A. E. N. ASHFORD,
Clerk.

Council Offices,
Lyndhurst,
Hants.
March 1, 1951.

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NOTES of the WEEK

Married Women (Maintenance) Act, 1949 : Continuation Orders

The High Court has already had occasion to deal with questions arising under s. 2 (2) of this Act, which enables magistrates to extend a maintenance provision relating to a child beyond the age of sixteen if he is or will be engaged in further education or training. In *Nowell* v. *Nowell* [1951] 1 All E.R. 474, the Divisional Court heard an appeal from such an order, and laid down the principles upon which such cases should be decided. First, in the exercise of their discretion, magistrates should consider whether the proposed education or training would or would not be in the interest of the child. Secondly, they must consider the financial position of the parties.

As to the interests of the child, the question will, no doubt, be determined partly on the plans for his future. In some cases the court may not think continued education or training likely to be so useful from the point of view of his future career, as immediate occupation in some wage-earning capacity with good prospects. The court will always have in mind the provision in s. 1 of the Guardianship of Infants Act, 1925, that in considering questions of custody and upbringing of an infant the court shall regard the welfare of the infant as the first and paramount consideration. The matter of education and training is one aspect of upbringing.

Approved Schools and Character Training

The principal objects of an approved school may be stated as education, vocational training and character building. The first and the second are easily understood, but many people who have seen little of modern approved schools may wonder how the staff set about the attainment of the third. A reprint of an article entitled " A School with a View " which recently appeared in the *Lancet* has been sent to us by the London Police Court Mission, and this illustrates the methods of one school, which are, we have no doubt, employed by many.

The school is the Cotswold Approved School for Boys, for which the Mission is responsible, and whose headmaster, Mr. C. A. Joyce, formerly a borstal governor, is well known to the public.

The success of the school is beyond doubt, and the *Lancet* article states that during the past nine years only thirteen *per cent.* of the boys have got into any serious trouble after leaving the school : this in spite of the fact that on arrival at the school most of them are undisciplined and not fond of work. The school is run on the house system, each of the three houses differing markedly from the others and boys not infrequently ask to be transferred. The strictness of one house may suit one boy, the much freer atmosphere of another appeals to a different kind of boy.

It is obvious that character training here depends more upon example and friendly advice than upon punishments, but it would be quite a mistake to think that the boys can do just as they like with impunity. Mr. Joyce's attitude towards the boys is that of a good friend and a wise counsellor who makes them realize that misconduct of any kind brings its penalties, but the penalties are really brought about by the boys themselves. They learn that it does not pay to be dishonest or to be guilty of offences against others in any way, and gradually they learn to do right from better motives than mere self interest, recognizing their duty to other people. It is not surprising to learn that voluntary attendance at religious services, in addition to the weekly compulsory service, is good, and that many boys have given proof of the impression made by evening prayers and the very short talk which accompanies them.

When we think of what reformatory schools were like in their early days, and even forty or fifty years ago, we may well rejoice at the change that has come over the outlook and the methods of those who are responsible for the approved school system. Criticism today is apt to concentrate on the high rate of expenditure and standard of comfort, which are said to surpass those of many public schools. This criticism is in our opinion sometimes justifiable, but it is at all events better to do too much than too little.

American and English Law

The main feature of the *Law Quarterly Review* for January is an article by Professor Roscoe Pound, on the development of American law and its deviation from English law, being an address delivered at the Third International Congress of Comparative Law on July 31, 1950. This is short but, as one would expect from the learned author's reputation, it says in short compass more than most legal writers would succeed in saying effectively in ten times the space. There is, to begin with, the question whether such a thing as " American law " exists, seeing that the federal government of the United States has only a limited law making power, and that even the Supreme Court does not ordinarily deal with anything like so large a proportion of the cases which arise as are dealt with, for example, by the House of Lords. Starting from an examination of this rhetorical question, the author proceeds to contrast the system carried from England to New England and thence spread, broadly speaking, throughout the United States with the typical features to be found on the Continent of Europe. At the root of this contrast are the habit of judicial precedent and the use of the jury, both tempered by the

fact (which Professor Roscoe Pound quotes from an American judge who had been a pioneer) that, for a large part of the developing United States, the judges did the right thing because they had not enough knowledge to go wrong. There is profound truth in this apparently cynical suggestion, as can be seen if one looks back to the older English case law before judges began to spin refinements in Victorian times. There are important sections of the United States, as there are in Canada and elsewhere in the British Commonwealth, where the legal roots were transplanted from a soil very different from that of England, but even there the effect of being within a political system, in which English law and English judicial modes of thought predominated, has been to modify substantially the Roman or Teutonic outlook. This paper by Professor Pound ought to be read by every student, and is particularly worth the attention also of the teacher and practitioner.

Hearsay Evidence

Professor Pound's paper is followed by one entitled "Hearsay Evidence, a Comparison," in which Mr. H. A. Hammelmann examines the rules affecting hearsay in the Anglo-American system, as contrasted with those generally prevailing on the Continent. There is interesting information from original sources regarding the treatment of such evidence in several western European countries. It is commonly said, by those who have small knowledge of continental practice and procedure, that no distinction is drawn between direct and hearsay evidence, and the same might even be suggested to the minds of readers of two learned and important articles published in *The Times* in February upon the *conseil d'état*. In reality, there are occasions when evidence which is strictly hearsay can be received in English courts: its general exclusion is to a great extent derived from the specially English development of jury practice. Continental countries, where the judge or magistrate takes a more active part than with us in the investigation of the truth, do not find a need for the trammels which have been imposed upon the typical English investigation in open court.

Islamic Law

There is also in the same issue of the *Law Quarterly* a learned, and at the same time interesting, paper by Professor Vesey Fitzgerald on the alleged debt of Islamic to Roman law. The professor treats with no lack of vigour many of the writers who have claimed to find such a debt established. None who have not studied in this particular field can really appraise the controversy; if Professor Fitzgerald can be relied on, it does seem that it is a field in which there has been a good deal of wishful thinking. The matter is not without importance, since there still remain possibilities of bringing before the Judicial Committee of the Privy Council cases from what was once called the British Empire, in parts of which Islam has supplied the common law whilst yet other parts have drawn their common law from Rome. English members of the Privy Council, in considering such cases, can hardly avoid a Roman tinge of thought surviving from their early academic training.

A Lancashire Probation Report

One advantage of reading numerous reports of probation committees and probation officers is that one gains some idea of the varying conditions under which probation officers work and of their particular difficulties. Now that probation officers mostly undergo the same type of training some sort of technique has been developed, though there is still plenty of room for work on individual, and not always stereotyped lines. However, in spite of more uniformity in method, there are still great differences as between different districts, and an officer accustomed to work in a densely populated area may well feel somewhat at a loss when first transferred to a district with a scattered population.

In the report of the Lancashire No. 9 combined probation area, which area includes Manchester county petty sessional division and the borough of Eccles, there is evidence of the difficulties that may attach to a particular district. The senior probation officer, who mentions that this is his first report, refers to the need for reports and visits as means of maintaining close contact with probationers, and says: "The physical difficulties encountered in implementing these requirements are considerable. The probation offices are outside the probation area, which can only be reached after a journey through Salford, Manchester, or both! The provision of a car by the probation committee will prove very helpful to officers in visiting, but the problem of reporting remains. In the absence of any sub-office, recourse has been made to a system of local report centres; these are held by different officers in the evenings in schools, churches and a town hall. There is only one evening during the week when no report centre is open, and on several evenings two centres are running. By this means regular reporting can be insisted upon from the majority of probationers."

Then there is the question of home visits. "Owing to the tradition in this area of married women working, visiting presents its own peculiar problems. It competes with report centres, and with inquiries for courts and clinics for the limited time available in the evening."

In submitting statistical tables, Mr. Newton utters a word of caution. Since the most trustworthy figures as to successful probation are those relating to a period of years after supervision has ended, and as this is his first annual report, he asks that the tables may be examined with that limitation in mind.

The Festival of Britain, 1951

Many people are finding it difficult to be enthusiastic over the Festival of Britain although the idea of celebrating the great exhibition in the Crystal Palace a hundred years ago was both imaginative and worth while. The Exhibition will no doubt show the great advance of the country since that time. It is now so near that however doubtful some people may be as to its desirability at the present time of uncertainty and austerity, we must recognize that postponement at the present stage is out of the question and we must do all we can to make it a success. The Festival is not, however, only a London affair but all over the country local arrangements are being organized. In Wales, for instance, there will be a National Festival programme in Cardiff. The Festival authorities have emphasized the aim of putting the whole of Britain on show cannot be achieved alone through the medium of exhibitions and festivals of the arts. Every locality has therefore been encouraged to participate and add its own spontaneous and individual activity to the national events. Many schools, youth organizations and further education institutions have taken steps to participate in the Festival activities that are being planned for their neighbourhoods by voluntary organizations or by the local authority concerned but the nature and scope of the activities to be undertaken will necessarily vary according to local circumstances.

Acting on a suggestion from the Ministry of Education, some local education authorities have taken a lead in co-ordinating on a county or county borough basis the Festival activities of all the schools and other institutions that they maintain. Others have preferred that the separate schools and institutions should align their activities more directly with those that have been organized by the borough or county district council in whose

boundaries the school is situated. It has been decided that some schools should celebrate the Festival with suitable work in school hours. Some of this will be associated with preparation for visits to the various exhibitions, both in London and the provinces, and with the further discussion of what has been seen, heard or learned on these occasions. The activities of local history groups have shown that in many localities there is a rich accumulation of treasures and achievements that can properly be studied and celebrated as part of a national festival of thankfulness and legitimate pride. The Festival of Britain, which aims at presenting national achievements through local as well as national celebrations, is clearly a suitable occasion for helping the children to appreciate their local treasures and to realize something of their social and political heritage.

Footpaths and Commons

The January issue of the journal of the Commons, Open Spaces, and Footpaths Preservation Society is, as always, worth attention by members and officials of local authorities. There is a note upon the future of commons and another on the first report of the National Parks Commission. There is, we think, ground for reconsidering some of the procedure in relation to commons, which has not been overhauled for fifty years, but meantime the society does well to stress their importance to the public. There is a good deal on footpaths and rights of way, including an analysis of the relevant provisions of the National Parks and Access to the Countryside Act, 1949. The recent case in the Court of Appeal relating to certain green lanes at Tottenhoe in Bedfordshire is examined from the special point of view of the Society. The moral drawn is that local authorities and others who may have a *locus standi* should be on the alert, to protect interests which they think in need of protection at an early stage. This particular case turned on technical considerations which would not ordinarily arise, including the existence of a local Act, but the moral drawn from it by the Society is of general application.

FOOD HANDLING

We have several times in recent years spoken, in connexion with the reports of medical officers of health and others, of various aspects of contamination, in premises where food is prepared wholesale or supplied retail for immediate consumption. This contamination is undoubtedly serious, though liable to some exaggeration, as when members of Parliament compare loss of life and health from this cause with the consequences in old days of cholera and plague. We welcome, accordingly, the discussion in the House of Commons on February 2, and the publication of the reports of two working parties by the Ministry of Food. The Manufactured Meat Products Working Party, which was appointed on May 31, 1949, has exposed some nasty practices, and made a number of recommendations. The practices need not be set out here; typical, though much less evil than some others, is using the finger or thumb in preference to an implement, for making holes in pastry. There are almost innumerable instances where the operative, unless carefully instructed and as carefully supervised, will instinctively use hands instead of tools. Some of the recommendations are technical, but many should be obvious, such as avoidance of unnecessary handling of meat and other ingredients in manufacture, and personal cleanliness on the part of those who have to handle the ingredients. A good deal of what is said here is really just as applicable to the domestic kitchen, where education in cleanliness is, in a sense, even more important than for factory workers, because in the nature of things there is no supervision.

The Report of the Working Party on Hygiene in Catering Establishments was published a few weeks later. It may be the more important of the two, both because catering establishments are far more numerous than factories for meat products and because public supervision is a much more complicated and difficult problem. This report also calls attention to undesirable practices, some of which we had ourselves already mentioned, and makes recommendations. We regret that first and foremost among these is registration of all catering establishments with local authorities: we will return to our reasons for regretting this, merely remarking at this point that a majority and a minority of the members of the working party, while agreed in recommending registration, construe the expression in diametrically different senses, so that they are really recommending different things.

Next, and in our view much more useful, comes the suggestion of a "standard code" and "target code" of precautions for safeguarding food served in catering establishments. The standard code comprises precautions which (almost all of them) are obvious—and of almost all it can be said that any observant person who regularly takes meals in public places can see infringements every day. One which is put in the forefront, that persons should not handle food when suffering from sores or certain named discharges, is so commonly infringed that it is to be feared that trouble would ensue with staff in any premises where serious attempts were made to enforce it. We notice that the representatives, medical as well as lay, of the Ministry of Health and Department of Health for Scotland think this recommendation goes beyond what is practicable, and that in a later paragraph the working party explicitly admits that similar restrictions are impossible as regards persons suffering from several common excretory troubles. The danger from these persons in the food trades is a special case of the general danger which they cause to the community. "Coughs and Sneezes spread Diseases." Once let this be believed, and a good part of the battle will be won.

Immense importance is rightly attached to cleanliness of the persons of food-handlers, and of the premises, though here again some of what is proposed for inclusion in the standard code would be unlikely to be accepted in everyday working by the staffs. On the other hand, the working party do recognize the impossibility of applying the standard code in several types of small establishment, in mobile catering units, or places used occasionally, and a practical grasp of the subject is shown in the special recommendations for the counter trade in public houses. Covering of food, and that foodstuffs should not be kept from day to day in such a manner as to become cultural breeding grounds for bacteria, are rightly stressed in regard to establishments of all types. The target code is much longer and more detailed, much of it directed to structural requirements and installations. Although the "management requirements" occur in this code, they might be read into the "standard code," for without them—at least most of them—the other provisions of both codes might as well be scrapped. Here again, however, there is now and then a failure to be realistic. For example, it is suggested that smoking while preparing or serving food should be prohibited: having lately heard from an old established correspondent of his finding (about the time when this report was published) a half smoked cigarette in the midst of a portion of boiled potatoes in a first-class London restaurant,

we are sceptical about the likelihood of enforcement of this particular precaution : one which the householder so fortunate as to possess a maid servant would today scarcely dare to enjoin upon her as regards the kitchen. Nor do we suppose that the general run of smaller establishments throughout the country are at all likely to exclude domestic animals from the rooms where food is prepared.

Quite a large part of the report consists of information upon chemical and other methods for cleansing vessels and utensils. Much of this is too scientific for ordinary readers, but no doubt the associations in the catering trade will be able to find means of conveying the information to their members in a shape to be understood by them. What it comes down to is that merely removing obvious remains of food is not enough ; the invisible residuum must be rendered harmless, either by heat (which at the requisite degree of temperature cannot be applied except by mechanical methods) or by chemicals—which in their turn have to be used in proper strengths. In dealing with this whole matter of cleansing the report seems something less than realistic. Apart from a practical and sensible concession to the bars of public houses, and some special cases such as mobile catering units, a practice is foreshadowed (in the " target " paragraphs) of always having two sinks, and also (since sinks are not to be used for washing hands) a wash-hand basin also. This is easy, and the usual practice, in the large establishment, but where these things do not exist—and in most small establishments we think it safe to say that the three appliances do not exist today—the building work involved would be more than could be done without a civil building licence. Such a licence may not always be forthcoming : we have known cases where a local authority has refused it even for sanitary work recommended by its own sanitary inspector. And, even if a civil building licence is procurable, the goods themselves may not be, with the demand for copper and lead for national purposes, and sinks and basins for new housing schemes, with the import of these metals diminishing, and at home reduced output, as the factories and the raw material are turned over to rearmament. This is a material difficulty. On the personal or " personnel " side, whichever expression is preferred, we foresee even greater difficulty. Scullions and even waiters and waitresses are not, speaking in quite general terms, usually drawn from the brightest types of work-people or the more refined working-class homes. Muddle, disorder, and even dirt are a normal environment in many of the places where they spend their time when not at work. Even in the best equipped establishments belonging to big catering concerns, persons who have had business to do there can tell tales of misuse of appliances and of slovenly habits, enough to turn the stomachs of the patrons if they knew what was going on behind the scenes. The higher members of the management of such places cannot keep constant watch upon these horrors ; if they do discover something, they may feel obliged to turn a blind eye lest discipline or rebuke of the offender lead to a walk-out of staff who nowadays may not be easily replaceable, or a sit-down strike at some critical moment. In the small establishments which are the vast majority, with roughish staff of careless personal habit, the wash-hand basin as a thing to be used for something different from the sink would seem just fussiness—as indeed with most of the elaborate ritual of cleanliness laid down in the report. We cannot escape the conclusion that its road is paved with the good intentions of the medical members, and managerial persons from big-scale businesses, who make up together so large a proportion of the working party. On the other hand, there can be no reason against taking such steps as are possible for reducing infestation by rodents and by insects—cockroaches, in particular, are treated in many establishments (even of the most expensive class) as a visitation of Providence against which little can be done, and are tolerated far too readily.

Tolerance both by caterers, using this word to cover both employers and employed, and by the public, of practices and omissions which ought not to be tolerated, accounts, indeed, for a large part of the trouble. Kitchen staff are only too likely to walk out if expected to follow such elementary rules as washing the hands after visiting the water-closet or the urinal (and the dining room staff know that many of the customers equally ignore the rule) ; only the boldest customer will refuse a cracked cup ; many will put up with unclean plates and spoons rather than risk the rudeness with which complaint is often met—sometimes rudeness is supported by the other customers, making opprobrious comment about people who complain of such everyday occurrences. All this turns on education, of the customer as well as of those in the trade as managers or employees.

The report concludes with a pargraph in which it is remarked that " improvement . . . must ultimately largely depend upon the interest and activities of local authorities." We have said this ourselves, and we should like to see signs of even greater activity in investigating conditions in catering establishments, on the part of the large local authorities with ample resources whose areas include so large a proportion of the establishments serving the visitor to London. But in the sentence we have just quoted the adverb " largely " is important. We ourselves think more stress should be laid upon the trade's own duty to reform itself. The same group of paragraphs of the report commends, rather half-heartedly perhaps, efforts made in some towns to set up Food Traders' Clean Food Guilds. This is pre-eminently a matter in which immense good might be done within the industry by efforts of its own, above all by the trade unions. If trade unionism once became general, the union would be in a position to deal in its own way with a member who fell below its standards —be it noted that two trade union officials were on the working party and signed the report. Unfortunately, although there has in the learned and semi-learned professions been an increased tendency to empower professional bodies to impose disciplinary codes, the idea of " self-government in industry," being deemed " undemocratic," has become unpopular in England. Just as the law has never succeeded in stamping out corruption, but experience shows that an industrial organization can go far towards doing so if empowered to expel dishonest members, so we believe that an organization of the trade itself, uniting employers and employed for mutual benefit, could do more than local authorities to promote cleanliness amongst its members. The first thing would, however, be to bring such an organization into being, and, as was shown in the report issued last year (Cmd. 8004) on the operation of the Catering Wages Act, 1943, there is no organization able to speak and act for the trade as a whole or even for most of the large sections of the trade.

Meanwhile, the responsibility must (" largely ") fall on local authorities. And this brings us back to the registration of establishments.

We have said that we regret the prominence given to this among the recommendations of the working party. To speak of registration is indeed ambiguous, unless the speaker goes on to indicate what form this is to take. Merely registering premises where food was sold for consumption on the premises would add nothing to the local authority's existing knowledge. If a local authority does not know all the places in its area so used, this can only be because the sanitary inspector, the building inspector, the rating officer, and the planning officer (of the local authority or of the planning authority where that is different), are working in water-tight compartments. Certainly they often

are, as our Practical Points show, but there is no reason why they should. If registration means something more than this, it may be a power to refuse to register, with the result that the premises cannot be used, if the local authority are not satisfied with them. It appears to be in this sense that the majority of the working party speak of registration. A minority, representing catering interests, while not liking registration (except in the literal sense when it would mean nothing more than the word itself implies), would accept registration in a wider sense, provided this was given as of right in the first place, and could not be withdrawn except by quarter sessions. Finally, the word registration might mean annual registration, *i.e.*, in effect an annual licence. Each of these four things is different from the others, and it is essential to proper discussion of the problem to make clear which is meant. If a discretion about registration was involved, either at the outset or from time to time, or if cancellation by the local authority by reason of some supervening cause was introduced, it would be essential that there should be a right of appeal. This is a matter of general principle. The catering representatives in speaking of cancellation were careful to say they did not impugn the integrity of local government officials. Nor do we, although our approach from the legal side necessarily makes us aware of weaknesses not likely to be known to the general public. It is enough to say that local government officials are not immune from human frailty, and that dealing with a large number of small traders, many of them foreigners, is bound to give rise to petty graft and to what in the United States is called "protection." Under the British system of government, a right of appeal to the courts is the only safeguard worth anything at all, and this in our opinion should be to a court of summary jurisdiction, if registration was at the discretion of the local authority—this, because in such a case it is vital to give the small man protection (not in the trans-Atlantic meaning) at an accessible level. If registration had once been granted and the local authority desired to cancel it, we would for our part be quite prepared to concede the suggestion of the trade representatives in this report, that the local authority should have to apply to quarter sessions. Neither group of members on the working party has proposed an annual licence, so this need not be further considered.

Even so, registration as understood by the working party might, as it seems to us, have unfortunate results.

Almost inevitably, it would be taken by many customers as an indication not merely that the premises were satisfactory but that the local authority was, in some sense, guaranteeing their continued cleanliness, and the continued taking of proper precautions in the handling of food. This would be misleading, and many local authorities might in course of time be only too inclined to treat registration as an end in itself, and to neglect the periodical, and indeed constant, inspection which is the essence of the matter—and will so remain, so long as public opinion continues to put its trust in local authorities.

GUARDIANSHIP ORDERS AND "FRESH EVIDENCE"

Few persons concerned with courts of summary jurisdiction would deny the conclusion reached in the article on "Venue under the Guardianship of Infants Acts" at p. 100, *ante*, that those Acts urgently need amendment so as to overrule the effects of the decision in *R.* v. *Sandbach JJ.* [1950] 2 All E.R. 781. As an example of the difficulties raised by this latter decision the article refers to a case in which an order, made in a north of England town where the mother resided, was revoked on the application of the husband on the "fresh evidence" that, in view of the decision in *R.* v. *Sandbach JJ.*, *supra*, the court had had no power to make the order since at the time of making the order the husband was living in another jurisdiction.

This raises alarming prospects for there must be many thousands of orders which could be similarly attacked. It is arguable however that a court in such circumstances is by no means bound to discharge the order. It will be recalled that s. 3 (4) of the Guardianship of Infants Act, 1925, does not mention "fresh evidence" but simply provides that "Any order so made may, on the application either of the father or the mother of the infant, be varied or discharged by a subsequent order": nevertheless in *R.* v. *Middlesex JJ.*, *ex parte Bond* (1933) 97 J.P. 130, Scrutton, L.J., said: "It is quite clear that justices can upon fresh evidence alter, vary or discharge the order they had previously made . . . But it appears to me quite clear that justices cannot alter their previous order when, as in this case, there is no evidence of any fresh circumstances." In the case of *Re Wakeman*, *Wakeman* v. *Wakeman* (1947) 111 J.P. 373, Jenkins, J., referred to the above quoted judgment of Lord Justice Scrutton and said: "With that, as a general proposition, I respectfully agree, but it seems to me that, if injustice is to be avoided, the stringency of the test to be applied in determining whether further evidence adduced in support of an application under the Guardianship of Infants Act, 1925, . . . ought to be treated as evidence which could not reasonably have been made available at the date of the order sought to be varied or discharged must vary a great deal according to the circumstances of each particular case. I think, too, that the absence from s. 3 (4) of the Act of any express reference to "fresh evidence" suggests that the court was intended to have greater latitude in dealing with applications under that subsection than it had under analagous statutory provisions which expressly require the production of fresh evidence as a condition of the variation or discharge of any order made."

It seems then to be beyond dispute that there must be *some* fresh element in the case before an order can be varied or discharged, although the court can take cognizance of matters which might not be admissible as "fresh evidence" within the somewhat narrow meaning the decided cases have attached to those words. In the circumstances of the case referred to in the article there is, it may be suggested, no fresh element at all although it is true that if those same facts were now to be placed before a court a different decision would be reached, in the light of the way in which the law applicable to those facts has been declared. What the husband is really asking the court to do is not to consider some fresh matter which he can now bring before the court, but to reconsider matters which were already placed before the court, *i.e.*, he is asking the court to sit as a court of appeal upon its own judgment. In these circumstances the writer is of the opinion that courts are justified in refusing to revoke the order on the ground that there is no fresh element such as is required by law. However, even if, as a matter of law, a court may revoke a guardianship order solely on the grounds produced by the husband in the case under discussion, it is submitted that, having regard to the fact that in all such matters the court is required to regard the welfare of the infant as the "first and paramount consideration," and that there is no intrinsic merit in the application at all, a court would be justified in refusing to discharge the order bearing in mind these considerations alone.

DANGEROUS DILAPIDATIONS

The decision in *Mint and Another* v. *Good* [1950] 2 All E.R. 1159 should be noticed. It carries, further, the principle of *res ipsa loquitur* in respect of injury to persons who are lawfully in the vicinity of a dangerous structure. Plaintiff when upon the highway was injured by collapse of a wall separating the forecourt of two houses from the highway. The houses were let by the defendant upon weekly tenancies, and it was established that the collapse of the wall was due to lack of repair. The tenancy agreement did not impose on either party any obligation to do repairs. On these facts Stable, J., held that the owner was not liable to the plaintiff, because he had not specifically reserved the right to enter on the property to do repairs, and therefore his doing so would (unless he had obtained permission from the tenant) have been a trespass. The old case of *Pretty* v. *Bickmore* (1873) 37 J.P. 552, provided judicial authority for finding against the plaintiff in such a case : indeed strong authority, for defendant was there shown to have known of the defect when he let the premises, to have taken a covenant from his tenant to put the premises into repair, and then (orally) told the tenant that he need not do the particular repair for want of which an innocent passer-by in the street was seriously injured. If the law could believe a property owner to be free from duty to the plaintiff on these facts, it could believe anything. Yet a court of three judges so held unanimously, and for many years the text books took the view that a property owner could thus contract out, so to speak, of the normal liability for injury to a third person resulting from neglect of his property, by the simple device of letting it to somebody else—certainly where that somebody undertook to do the repairs ; quite possibly where neither side undertook to do them. The owner was believed to be certainly liable to third parties only where he had undertaken himself to do repairs : *Wilchick* v. *Marks & Silverstone* (1934) 151 L.T. 60. And this notwithstanding that the injured person, who was not a party to the letting, would be left in many such cases without a remedy. In *Pretty* v. *Bickmore* the tenant might have been worth suing : the reports do not show, but in practice it would generally be useless to sue the tenants of property let on weekly tenancies, even if upon doing so a liability on their part could be established —and properties let upon weekly tenancies are at once the most numerous and the most likely to be in dangerous condition. In *Heap* v. *Ind Coope & Allsopp, Ltd.* [1940] 3 All E.R. 634, similar physical facts were before the Court of Appeal, which decided in favour of the plaintiff, but in that case the owner of the property had expressly reserved to himself the right to enter and do necessary repairs : " why then " (said the Court) " should he be under no duty to make the premises safe for passers by ? " The distinction, if any, between *Ind Coope & Allsopp, Ltd.* and *Mint* v. *Good*, was therefore that in the one case the owner had and in the other had not an express right to enter and repair the premises. From the point of view of the plaintiff, however, this distinction was *res inter alios acta* as, indeed, is a tenancy agreement by which an owner puts it out of his power to do repairs, and, going back to first principles, the Court of Appeal in *Mint* v. *Good* reached a conclusion in favour of the plaintiff along two lines of reasoning. It being well known that buildings do in course of time decay, it can be said that a property owner, who by agreement lets his property go out of his control without reserving any right to enter and keep it in repair, must take the consequences, if a person who is not party to the agreement is damnified by the disrepair. Or it can be said that, in the absence of a stipulation either way in the agreement for letting, the lessor must be presumed to have the right to enter. Denning, L.J., took the first of these lines, saying, in effect, that a property owner can nowadays no more contract himself out of liability in tort, to a person not party to the contract, than he can out of his liabilities under the Public Health Acts. Somervell, L.J., in the leading judgment took the second line ; Birkett, L.J., in a short judgment agreed with both of them. So far as it goes the decision in *Mint* v. *Good* is satisfactory : justice was done to the plaintiff in that case. There remain still open to argument, at the expense of some future litigants, two possible cases. One is where the tenancy agreement is silent about a right to enter or an obligation to repair as between landlord and tenant, and the letting is for a longer term, such as the very ordinary three years, or even more. In *Stocker* v. *Planet Building Society* (1879) 27 W.R. 877, it was pointed out by James, L.J., that the lessor in such a case has no more right than a stranger to enter for purposes of repair, and, unlike the landlord of weekly property, who can get possession quickly, or if not can enter to do repairs by virtue of s. 16 (2) of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, the lessor for three years cannot do anything about it. The reason of the thing suggests, however, that he ought to be liable to third parties, even though the latter may have an alternative remedy against the tenant. Denning, L.J.'s judgment on *Mint* v. *Good* supports such an answer, even though in the case before the Court there was a weekly tenancy. The second possible case still to be argued and decided is perhaps more difficult : it is where a landlord has expressly taken from the tenant a covenant in the tenancy agreement binding the tenant to do all necessary repairs. This again is *res inter alios acta* from the point of view of a plaintiff injured by collapse of part of the building. It is all very well to say that the tenant is *prima facie* the person liable in nuisance to passers-by : the courts have indeed said so again and again, but the tenant, even of premises let on a long lease, may be financially unsound at the time when action is brought (it may indeed be because he cannot find money for repairs that part of the building has collapsed), and a right of action against him may be an unsatisfactory remedy for the injured plaintiff. There is much to be said on grounds of principle, for giving an injured third party a right of action in all cases against the property owner, leaving the latter to whatever remedies his own prudence may have caused him to reserve against a tenant. As regards the issue between landlord and tenant, we think it right to call attention to what seems to us an inadvertent slip in the headnote of the All England Report of *Mint* v. *Good* at p. 1160 : the headnotes and editorial comments in the All England Reports have come to be regarded as one of the practitioner's most reliable methods of keeping himself abreast of legal developments, and it would be unfortunate if, by the misreading of a sentence capable of being misunderstood, the decision in *Mint* v. *Good* were to be taken to have laid down a proposition in the law of landlord and tenant which was not in contemplation of the court. The headnote says that the court held that " in the absence of evidence or of express stipulation to the contrary it (*sic* : ? for " it " read " there ") was to be implied in an agreement for a weekly tenancy which was silent on the matter a term that the premises would be kept in a reasonable and habitable condition *by the landlord* (italics ours) and that he would have the right to enter and effect necessary repairs." On reference to what Somervell, L.J., in the leading judgment said at p. 1162 it will be seen that after the word landlord there occur the words " and not by the tenant." The judgment continues : " although the landlord does not bind himself to do so, both sides contemplate that he will have the right to enter and look after his property by doing repairs." The references

made by Lord Justice Somervell to a "landlord" have to be read in their context. In our Practical Points and otherwise we often find that tenants and even their advisers are very apt to think that, as between them and their landlords, the landlord is, even in the absence of agreement to that effect, liable to keep the premises in habitable condition. Unless carefully considered in its context the headnote in this case would support this impression on the part of tenants which, as we have had to point out many times in recent years, is erroneous in the great majority of cases.

LOCAL AUTHORITIES AND FIRE PRECAUTIONS TO BUILDINGS

Local authorities have duties under several statutes to ensure that fire precautionary arrangements are effected at certain types of buildings. For instance, s. 34 of the Factory Act, 1937, makes it an offence for any premises to which the section applies to be used as a factory unless there is in force a certificate of the local authority that it is provided with such means of escape in case of fire for the persons employed therein as may reasonably be required by the circumstances of the case. The certificate must specify precisely and in detail the means of escape provided, and must contain particulars as to the maximum number of persons employed, or proposed to be employed in the factory as a whole and, if the local authority thinks fit, in any specified part thereof, and as to any explosive or highly inflammable material stored or used and as to other matters taken into account in granting the certificate. The occupier of the factory must attach the certificate to the general register of the factory and a copy of the certificate must be sent by the local authority to the district inspector.

Section 34 applies to every factory: (*a*) in which more than twenty persons are employed; or (*b*) which was constructed or converted for use as a factory on July 30, 1937, or constructed or so converted after that date, and in which more than ten persons are employed in the same building on any floor above the ground floor of the building; or (*c*) of which the construction had been completed before July 30, 1937, and in which more than ten persons are employed in the same building above the first floor of the building or more than twenty feet above the ground level; or (*d*) in or under which explosive or highly inflammable materials are stored or used.

The local authority must see that any factory to which the section applies is examined with a view to the grant or refusal of a certificate. For this purpose, officers of the council must be authorized in writing.

It was recognized when the Act came into operation that the necessary surveys would take some time, particularly in large industrial districts, and provision was therefore made relieving occupiers of liability to prosecution until the local authority had dealt with their case. The occupier of a factory has a right of appeal to a court of summary jurisdiction against the requirements of the local authority and afterwards to quarter sessions. Although the determination of what should be required by providing means of escape in connexion with a factory is a matter for the local authority the institution of proceedings for using premises as a factory without a certificate, or failing to maintain the means of escape specified in the certificate, is a matter for the factory inspectors. There must therefore be close co-operation between the factory inspectors and the local authorities on this matter.

Under s. 35 the Minister of Labour and National Service (who has superseded the Secretary of State in this matter) may make regulations as to the means of escape in case of fire to be provided in factories or any class or description of factory. The only regulations so far made under this section are in Part 2 of the Cinematograph Film Stripping Regulations, 1939 (S.R. & O. 1939, No. 571). It is the duty of the local authority to see that any such regulations are complied with; and if a certificate has been issued under s. 34 in respect of a factory which is not in conformity with the regulations, the local authority must serve a notice on the occupier requiring him to carry out such alterations as they consider necessary for the purpose. Local authorities also have powers to make byelaws as to the means of escape to be provided in factories or any class or descriptions of factory, but such byelaws are void in so far as they contain any provisions inconsistent with regulations made by the Secretary of State (or now by the Minister of Labour and National Service) under the section.

Another statutory provision which gives similar powers to local authorities is s. 60 of the Public Health Act, 1936, which enables a local authority to require the owner of certain buildings to provide means of escape in case of fire from each storey, of which the floor is more than twenty feet above the surface of the street or ground on any side of the building. The authority may require the owner of the building or a person proposing to erect a building, to execute such works in this connexion as may be necessary. A building for this purpose is one which exceeds two storeys in height and which (*a*) is let in flats or tenement dwellings; or (*b*) is used as an inn, hotel, boarding-house, hospital, nursing home, boarding-school, children's home or similar institution; or (*c*) is used as a restaurant, shop, store or warehouse and has on the upper floor sleeping accommodation for persons employed on the premises.

There are apparently many properties, such as boarding-houses in some parts of the country, where the local authority has not yet felt able to enforce the provisions of this statute which were new when the Act of 1936 came into operation. Some authorities, particularly in the coastal towns, did not find it practicable to make all the necessary surveys before the outbreak of war. Since then with the increased cost of building work, and other post-war difficulties, many owners may find it difficult to get the necessary work done and some local authorities have therefore felt that they may reasonably give further latitude in the matter. It is believed, however, that steps are being taken generally to see that the requirements of the Act are complied with. This matter is of importance in connexion with the registration of old people's homes under s. 37 of the National Assistance Act, 1948. There are various grounds on which registration may be refused. This may be done, for instance, if for reasons connected with the construction or state of repair of the premises they are not considered fit to be used for the purpose. It would clearly, therefore, be appropriate for the county council in registering such a home to require, as a condition of registration, that the owner should at least do what is necessary to comply with the requirements of the local authority under s. 60 of the Public Health Act, 1936. Some authorities however are going further and requiring much more to be done on the ground that the

occupier should comply with the requirements (or we prefer to use the word "recommendations") of the fire officer.

Under s. 60 of the Act of 1936 a person served with a notice to carry out certain works may appeal to a court of summary jurisdiction under s. 290. If the authority refuses to register an applicant under s. 37 of the National Assistance Act, he may appeal to a court of summary jurisdiction against such refusal, and if the grounds of refusal were as to the lack of fire precautions, it would be a matter for the court to decide as to whether this was sufficient ground for refusal under the terms of the section. It appears to be the practice of local authorities generally for a report to be obtained from the fire officer before a home is registered. In some instances the local authority is apparently requiring the whole of the recommendations of the fire officer to be carried out before the home is registered. This may involve very considerable expenditure on the applicant and it seems at least open to doubt as to whether the court would be justified in taking such an extreme view, particularly if the requirements of the Public Health Act had been met.

Finally reference may be made to one other statute which imposes a duty on local authorities in this connexion. This is under s. 6 of the Housing Act, 1936, which enables local authorities to make byelaws with respect to houses which are occupied, or are of a type suitable for occupation, by persons of the working classes, for necessary stability and the prevention of and safety from fire.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Jenkins and Hodson, L.JJ.)

February 21, 22, 1951

ALLEN *v.* ALLEN

Husband and Wife—Maintenance—Defence of reasonable belief of adultery of wife—Previous petition on the ground of adultery of wife dismissed.

APPEAL by husband from WALLINGTON, J.

In 1948 a petition by the wife for restitution of conjugal rights was dismissed on the ground that the husband had reason to believe that she had committed adultery. In 1949 the husband petitioned for a divorce on the ground of the wife's adultery, alleging the same facts as those on which he had resisted the wife's petition for restitution of conjugal rights, and in November, 1949, that petition was dismissed. In 1950 the husband resisted an application by the wife for maintenance under the Law Reform (Miscellaneous Provisions) Act, 1949, on the ground that he still held a reasonable and honest belief that his wife had committed adultery.

Held, in the face of the judgment dismissing his petition on the ground of the adultery of his wife, the husband was not entitled to say that the belief which he entertained was entertained on reasonable grounds and to set up that belief as a defence to his wife's claim for maintenance.

Appeal dismissed.

Counsel: *Vaughan, K.C., Victor Russell*, and *A. D. Karmel* for the husband; *Mais* for the wife.

Solicitors: *Rider, Heaton, Meredith and Mills*, for *Knight & Sons*, Newcastle-under-Lyme (for the husband); *Doyle, Devonshire & Co.* for *J. E. Moxon & Co.*, Hanley (for the wife).

(Reported by F. Guttman, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before McNair, J.)

ABBOTT *v.* LONDON COUNTY COUNCIL

February 8, 1951

Pension—Increase—Pension "payable by local authority solely in respect of local government service"—Transfer of servant to transport board—Continuance as member of pension fund of local authority—"Enactment by which fund regulated"—London Passenger Transport Act, 1933 (23 *Geo.* 5, *c.* 14), *s.* 80 (9)—*Pensions (Increase) Act*, 1944 (7 *and* 8 *Geo.* 6, *c.* 21), *sch.* 1, *Part* II, *para.* 1.

ACTION for a declaration that the plaintiff was entitled to receive an increase of pension under the Pensions (Increase) Acts, 1944 and 1947.

The plaintiff, Mrs. Abbott, was employed in the tramway undertaking of the London County Council from August 23, 1909, to June 30, 1933, when she was transferred to and became a servant of the London Passenger Transport Board by virtue of the provisions of the London Passenger Transport Act, 1933. She remained in that service until August 3, 1938, when she retired as a result of illness. She had been a contributory member of the council's superannuation scheme from the commencement of her service and she continued a member after her transfer until her retirement when she became entitled to a pension of £86 16*s.* 8*d. per annum* based on one sixtieth of the average of her earnings during her last five years' service multiplied by the number of years of combined service under both the council and the transport board. She claimed to be entitled to have her pension increased by £21 14*s.* 2*d.* from January 1, 1944, until November 30, 1946, under the Pensions (Increase) Act, 1944, and by £30 from December 1, 1946, under the Pensions Increase Act, 1947, as being "a pension payable by a local authority solely in respect of local government service" within the Pensions (Increase) Act, 1944, sch. 1, Part II, para. 1.

Held, the plaintiff was not entitled to the increase of pension claimed because (i) service under the London Passenger Transport Board was not "local government service" within the meaning of para. 1 of Part II of the schedule and the plaintiff's pension was, accordingly, not "payable solely in respect of local government service"; (ii) no right to an increase was given by s. 80 (9) of the Act of 1933 because the Act of 1944 was not an enactment by which the council's superannuation fund was regulated within the meaning of that subsection, and, therefore, its provisions did not apply to the council in his connexion, and the words in the last clause of s. 80 (9), "benefits, rights and privileges," must be construed as relating only to the subject-matter of the earlier part and so as meaning, benefits, rights and privileges arising under any enactment, scheme, rules and regulations regulating the fund.

Semble: s. 80 (9) confers on a transferred employee the benefits of any enactment, scheme or rules or regulations regulating the superannuation fund during the period of his membership and is not limited to those which were in force when the transfer took place.

Counsel: *M. R. Nicholas* for the plaintiff; *H. E. Francis* for the defendants.

Solicitors: *Rexworthy, Bonser & Wadkin* for the plaintiff; *J. H. Pawlyn, Solicitor to London County Council*, for the defendants.

(Reported by F. A. Amies, Esq., Barrister-at-Law.)

NEW COMMISSIONS

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Lieutenant-Colonel Geoffrey Arthur Anstee, O.B.E., M.C., 3, Milton Road, Bedford.
Frederick Samuel Luddington, 16, Maitland Street, Bedford.
Mrs. Alice Jean Martell, Dunblane, 1, Rothsay Place, Bedford.
Edwin John Neate, 30, Westfield Road, Bedford.
John Allan Ormerod, Buttercups, Riddenha, Bedford.
Louis Jules Singer, Partenhale, 11, Linden Road, Bedford.
John James Voyce, 28, Cutcliffe Place, Bedford.
James William York, 32, Nash Road, Bedford.

NOTTINGHAM COUNTY

Mrs. Diana Mabel Gladys Barley, The Old Hall, North Muskham, Newark.
Mrs. Phyllis Mary Boldry, Southcote, Blyth Grove, Worksop.
Alfred Eggleshaw, "The Terrill," Annesley Woodhouse, Nottingham.
Mrs. Sylvia Fisher, Greenfield House, Radcliffe-on-Trent.
Charles Harrison, 116, Forest Road, Mansfield.
Major Thomas Garrett Mayhew, Hodsock Priory, Nr. Worksop.
Harold Phillips, 26, Church Road, Bircotes, Doncaster.
Mrs. Audrey Agnes Riley, 115, Cordy Lane, Brinsley, Nottingham.
Mrs. Beatrice Sharrard, 88, Mansfield Road, Underwood, Nottingham.

YEOVIL BOROUGH

Eric William Barham, 191, Preston Road, Yeovil.
Mrs. Evelyn Florence Marie Sedgman, Sunridge, Penn Hill, Yeovil.
Benjamin Denning, 68, Stone Lane, Yeovil.

MISCELLANEOUS INFORMATION

WORLD'S CITY TRAFFIC, 1949

The Annual Synopsis, under this title, has recently appeared. It is compiled and published by the Danish police under the auspices of the Committee for Road Safety appointed by the Danish Ministry of Justice. It is unique as the only world-wide statistical survey of traffic problems. It includes details obtained from forty-eight of the principal towns of the world.

These centres have between them a population of 79,933,540 and motor vehicles to the number of 7,633,500. Altogether there were 6,488 killed in road accidents and 287,497 injured; child fatalities were 1,113.

Regarding fatalities, practices vary somewhat in the various countries, since sometimes record is made only of those killed outright on the spot; others include those who die subsequently as the result of road accidents.

Arrests for driving whilst under the influence of drink vary too in circumstances due to the different laws. "It is moreover remarkable" says the report, "that all the cities in Great Britain come so very low down in the list," in comparison with the rest of the continent. The Scandinavian countries lead the rest of Europe for these offences. In Madras the Prohibition Act is in operation and there have been no proceedings for drunkenness whilst driving.

Training children in road safety measures: In Amsterdam this is a permanent part of the school syllabus. Rotterdam has a Teachers' Traffic Committee to give instruction and deal with school traffic problems; the police are incorporated.

In London safety training is compulsory in schools and the police co-operate with the staffs. Similar procedure is adopted in Copenhagen. The Hamburg authorities introduced a systematic course of instruction a few years ago and during the past year accidents involving children have been reduced by half.

The United States system is highly organized and the police cover the whole country in giving lectures, demonstrations, and distributing pamphlets. Automobile associations and road safety committees assist with films and radio transmissions. In St. Louis teachers are specially trained as driving instructors and schools have their own dual control cars. The Milwaukee authorities provide a network of cycling schools; pupils must pass a test and be awarded a cycling licence before being allowed on roads.

The School Patrol System: This method aims at making children responsible for one another in safety conduct, coming to and from school. The idea has been adopted all over America. A few years ago it was introduced in schools in Holland and Denmark, so far the only two European countries to try the experiment. Some American states have gone so far as to enforce school patrols by law. In San Francisco it has been a statutory requirement since 1947.

Play Streets: In the U. S. A. Play Streets have increased in number, and in Vienna, Helsinki and Washington the police close certain streets to traffic during the winter, to enable children to sledge in them. In Toronto a pennant is flown over schools having an accident free period of thirty days.

Driving Licences: These are issued for indefinite periods in Hamburg, Johannesburg, Lisbon, Milan, Paris, Rio de Janeiro, Rome, Stockholm and Vienna. In all other countries under review licences are valid for a fixed time varying from one to five years; in the majority of cases they remain in force for one year. In Holland and St. Louis it is two years; New York and Washington three years; Milwaukee, Los Angeles and San Francisco four years, and in Copenhagen, Helsinki, Oslo and Santiago five years.

Examination of Motor Vehicles: Practices vary widely, ranging from no inspection at all to frequent examinations. In America the majority of states require no inspection, but Columbia (Washington) makes an annual examination of private cars, commercial vehicles and motor cycles, and a six monthly one of taxi cabs, motor cars for hire and ambulances. The most exacting regulations apply in Athens, Philadelphia and Pittsburg, where all motor vehicles are inspected every six months. Elsewhere the inspection of private motor vehicles is seldom compulsory, but public service vehicles are usually examined every six or twelve months.

Special Traffic Courts are held in Cleveland, Detroit, Los Angeles, Milwaukee, New York, Philadelphia, Pittsburg, San Francisco and Washington. Generally elsewhere they are not held, except in Alexandria, Cairo, Calcutta, Singapore, Stockholm and to a certain extent in Johannesburg.

Parking Regulations: An attempt was made to obtain information about parking regulations and systems in force, but because of the mass of varied detail returned it was found impracticable to supply a condensed account in this publication.

The following details selected here and there from the figures given in respect of the forty-eight cities, provide some idea of the road accident situation. London: population 8,390,900, total killed 565 (including 121 children), injuries numbered 32,319 and intoxicated drivers 424; New York: population 8,161,000, motor vehicles 1,225,739, persons killed 575 (including 91 children), injuries totalled 30,532, intoxicated drivers (the total is not given); Calcutta: population 7,500,000, motor vehicles 74,370, killed 145 (including 43 children), injuries 3,861, intoxicated drivers 103; Paris: population 4,775,711, motor vehicles 329,947, killed 303 (the figures for children are not given), injuries 40,412, intoxicated drivers 210; Sydney (including the State of New South Wales): population 3,175,936, motor vehicles 473,256, persons killed 535 (including 72 children), injuries 9,537, intoxicated drivers 1,856; Rio de Janeiro: population 2,100,000, motor vehicles 70,794, persons killed 165 (figures for children not given), injuries 5,016, intoxicated drivers Nil; Los Angeles: population 1,967,357, motor vehicles 797,000, killed 269 (including 30 children), injuries 21,305, intoxicated drivers 4,545; Vienna: population 1,767,370, motor vehicles 55,329, killed 218 (including 27 children), injuries 6,058, intoxicated drivers 514; Rome: population 1,662,102, motor vehicles 148,821, persons killed 116 (including 20 children), injuries 9,201, intoxicated drivers 82; Hamburg: population 1,551,073, motor vehicles 50,894, persons killed 188 (including 38 children), injuries 4,553, intoxicated drivers 666; Santiago: population 1,392,362, motor vehicles 27,094, persons killed 112 (figure for children not given), injuries 2,794, intoxicated drivers 457; Milan: population 1,280,000, motor vehicles 175,000, killed 26 (including 4 children), injuries 1,646, intoxicated drivers (figure not given); Melbourne: population 1,259,000, motor vehicles 394,861, killed 435 (including 20 children), injuries 8,749, intoxicated drivers 430; Glasgow: population 1,110,000, motor vehicles 40,360, persons killed 111 (including 42 children), injuries 2,730, intoxicated drivers 132; Athens: population 1,000,000, motor vehicles 40,858, killed 73 (including 12 children), injuries 1,946, intoxicated drivers 13; Madras: population 1,000,000, motor vehicles 10,413, persons killed 42 (including 13 children), injuries 1,597, intoxicated drivers Nil; Brussels: population 920,309, motor vehicles 41,940, killed 29 (including 3 children), injuries 2,761, intoxicated drivers 221; Amsterdam: population 826,640, motor vehicles 22,844, killed 57 (including 16 children), injuries 2,381, intoxicated drivers 136; Lisbon: population 807,706, motor vehicles 25,233, killed 65 (including 9 children), injuries 3,524, intoxicated drivers 28; Copenhagen: population 763,000, motor vehicles 33,751, killed 58 (including 6 children), injuries 2,996, intoxicated drivers 497; Dublin: population 550,725, motor vehicles 39,995, persons killed 46 (figures for children not given), injuries 1,011, intoxicated drivers 60; Oslo: population 433,841, motor vehicles 26,949, killed 25 (including 5 children), injuries 1,099, intoxicated drivers 205; Zurich: population 385,276, motor vehicles 23,014, killed 26 (children Nil), injuries 1,747, intoxicated drivers (figures not given); Helsinki: population 362,684, motor vehicles 12,106, people killed 29 (including 8 children), injuries 622, intoxicated drivers 219.

ANCIENT RECORDS

Bedfordshire county records committee now have in their possession the wills of John Bunyan's father and grandfather (the latter bequeathed 6*d.* to each of his grandchildren) and the entry of letters of administration granted to his wife on his own decease.

These have come into the county's possession as the result of a new attitude on the part of the president of the Probate Division, for Bedfordshire is one of the first four counties to be entrusted with the custody of local wills prior to 1857. These include, also, those proved in the Archdeaconry of Bedford, and in the Peculiars of Biggleswade and Leighton Buzzard, some 28,000 documents.

The resources of the county record office in social and family history for the whole county are thus greatly enriched. The collection is now being indexed, and it will be one or two years before this work is complete.

NOTICES

The next court of quarter sessions for the Isle of Ely will be held on April 4, 1951.

The next court of quarter sessions for the borough of Guildford will be held on April 7, 1951, at the Guildhall at 11 *a.m.*

The next court of quarter sessions for the borough of Grantham will be held on April 11, 1951.

The next court of quarter sessions for the borough of Blackpool will be held on April 16, 1951.

REVIEWS

Ryde on Rating. By Michael E. Rowe, Harold B. Williams, William Roots and Clive G. Tottenham. London: Butterworth & Co. (Publishers) Ltd. Price 90s. net.

When a major legal textbook has become so well established as has *Ryde on Rating*, the reviewer is sometimes placed in a difficulty, in finding something fresh to say about a new edition. The greater number of probable readers and buyers of the book will already be familiar with it in earlier editions: certainly this must on the present occasion be true of our own readers of whom, on the local government side, there can be few who have not used *Ryde* regularly since attaining responsible positions, for there is no other work on rating to compare with it. But although it does not seem long since we reviewed the eighth edition in 1946, there is no difficulty this time in speaking of the necessity for bringing out a ninth edition. This has arisen primarily from the changes brought about by the local Government Act, 1948, and there is a good deal of other legislation, passed like the nationalization statutes under the auspices of the present Government, which has gone to build up the changed fabric of today. A new edition was therefore most desirable, showing what is the material with which the rating practitioner has to go to work today. The law of recovery of rates, to which *Ryde* has always given less attention than to other branches of the subject, has not been greatly changed, but the law of valuation bears hardly any resemblance to that created by Parliament and by judicial reasoning in the period of just over a hundred years since the Parochial Assessments Act, 1836, which could fairly be regarded as the corner stone of the law and procedure in which rating authorities, in the parish or district, and valuation authorities of the nineteenth century or twentieth century pattern, had moved and had their being. The Inland Revenue has taken over the making and reviewing of valuation lists, while assessment committees, county valuation committees, and the central valuation committee have been swept away. Even of the High Court jurisdiction in rating matters, there is not much left, the new Lands Tribunal having taken over the jurisdiction of Quarter Sessions with a resort directly to the Court of Appeal. The value to a hypothetical tenant from year to year has ceased to be the basis for valuing dwellings. Railway hereditaments are dealt with on a new basis, which gets rid of the complications of a century of case law, culminating in the Railway Assessment Authority, which has also gone. Nor have the courts been idle. There has been a good deal of judicial decision, though less changes in practice from this than from legislation. All this has meant that much of the book has had to be re-written; this task has been accomplished without any diminution either of its authority as a leading work of reference or of its readability. Its appearance at first sight is not greatly altered, there being rather more than two hundred pages on the principles of liability and non-liability, another hundred and forty upon annual and rateable values, and another two hundred upon the different kinds of property, followed by some two hundred more upon practice and procedure including the recovery of rates. The 840 pages of narrative exposition are followed by 300 pages of statutes and subordinate legislation, roughly half and half. These are clearly set out, and form one of the not unimportant features—since some of the Acts are old and looking them up in the bound volumes of statutes can be laborious. In the narrative portion of the book, the changes brought about by legislation will be most often found under the head of the measure of liability and in the detailed statements given for different kinds of property, but there is scarcely any part of the law of rating which has escaped the effects of the activity of Parliament in the last five years, and the practitioner, whether he is concerned with valuation, with the levying of rates, or with advising private clients or these subjects, can not afford to be without the assistance given by the learned editors. In dealing with the new law, they have had to state it without the benefit of guidance from the courts upon the points where differences of opinion can arise, but where they have discovered debatable points and given their own views the established position of the two senior editors in this sphere of work will lend assurance to the reader, that he is getting as good an opinion as is possible in advance of decisions by the Courts. Upon the principles of valuation *Ryde* has always been particularly strong; he is in a sense complementary to *Witton Booth*, the one dealing with the law, the other with valuation practice. And yet, if a comparison had to be drawn, the regular user of both books would probably say that *Ryde* was the more fundamental guide. These central chapters have retained in this new edition their essential quality, full and lucid analysis of the decisions upon which valuation practice rests, and have succeeded in linking that analysis to the altered rules for selected types of property which Parliament has now imposed on the judicial structure.

It should be mentioned that under s. 76 of the Local Government Act, 1948, statements have to be issued by the Minister of Health to be used in estimating hypothetical costs of construction in 1938, on which will depend the valuation of dwellings. These statements were issued from the Ministry in the middle of 1950, and there is a separate statement for every rating area. It would have been neither desirable nor possible to reproduce all these in a work upon the law and practice of rating, but the publishers have made available as a supplement to the present edition, for insertion in the pocket in the back cover (and without addition to the price), a specimen set of typical tables for a metropolitan borough, a provincial borough and a rural district. The method of using these tables is obviously technical, and scarcely a matter for the lawyer, but they will be needed when the legal and valuation advisers, both of the Revenue and of local authorities, are engaged on business in connexion with new valuation lists.

Ryde on Rating can never be light reading, though for those accustomed to its subject matter it has a fascination of its own. More important than this is the fact that it contains everything that the legal practitioner, public or private, can want to know about the law of rating, and everything also that the rating surveyor or valuer needs to have at hand for reference, when he is obliged to take legal considerations into account in his own mysteries.

Crime and the Police. By Anthony Martienssen. London: Martin Secker and Warburg, Ltd. Price 10s. 6d. net.

The title is rather a popular one for text books and works of fiction alike. The author is a member of the editorial staff of the *Economist*; he obtained much of the material at first hand by carrying out a survey of a number of police headquarters. There he was able to interview and receive the advice and assistance of many policemen of various ranks. In this way he has secured a broad and accurate picture of police departments, methods and personnel.

Mr. Martienssen has produced a compilation midway between a text book and a detective story; it has some of the merits and educative principles of the former without the unavoidable ponderance, and the leisurely readability of the latter, minus the purely fictional value of crime thrillers. The particulars are true and based upon cases that have occurred, and practices that are followed in investigations. This gives the book a right of appeal to the criminologist, magistrate, probation officer, the lawyer, policeman, and indeed the average reader. Anyone reading it will be conscious of a closer familiarity with crime and the police than would at first be regarded as practicable within so reasonably sized a volume.

In a foreword, Mr. R. M. Howe, C.V.O., M.C., Assistant Commissioner in charge of the C.I.D. New Scotland Yard, says: "It is some years since a comprehensive account of the police service was published ... This book does a valuable service by recording those changes from the point of view of the outside observer ..."

The extensive field of police organization, equipment, training and functions is discussed and explained and special attention directed to outstanding features of the constabulary fabric: the policewoman, the detective officer, senior officers, the scientific aspect of the work and an analysis of unusual cases. The author is discriminating, knowledgable, even bold, for he devotes a final chapter to: The Future of the Police.

Likely candidates for the police force will be much assisted by this work because of its sober approach and informative contents. In his treatment of the subject the author wisely avoids the pitfalls of being too elementary for the student, or excessively academic for the non-technical reader. That is no mean achievement. Many will not agree with Mr. Martienssen at all points, but the majority will applaud his attractive characteristic of being opinionable without being opinionated. Countless facets appear in a treatise of this kind and it is natural that where pure opinion is permissible each individual will cling to his own.

The first chapter deals with the constable's duties and responsibilities in relation to law enforcement. It is not universally appreciated that if he makes a mistake he runs the risk of being sued for damages, and the policeman frequently has to pay for an error of judgment. County, city and borough police come under review and the disposition of personnel is explained.

Criminal investigation departments are adequately covered, and the correlation between the C.I.D. and other branches of the force discussed. Illustrations from actual cases lend force to the exposition and supply an accompanying picturesqueness that compels interest.

Finally the author pinpoints a topical police-crime problem: "... in planning the prevention of crime to decide how many men are needed to police any particular area ..." One supposes that if and when the answer is known criminals will be effectively eliminated. But altogether Mr. Martienssen has researched and "felt the pulse" of the subject with a deft and discerning touch, and in *Crime and the Police* he has produced an Everyman's Guide to the police service.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MATRIMONIAL CAUSES BILL

The Matrimonial Causes Bill, a private Member's Bill, was given a Second Reading by 131 to sixty votes, after the Attorney-General had suggested that it should be withdrawn in favour of the setting up of a Royal Commission on the marriage laws.

The Bill, which was moved by Mrs. E. White (Flint, E.), proposes that separation, whether voluntary or by court order, for not less than seven years should be considered as ground for divorce on the petition of either party.

Mrs. White said that the Bill would allow the dissolution of marriages which had broken down and in which none of the purposes for which marriage was ordained was being served. The number of those separated was estimated at from 100,000 to a much higher figure, but she was primarily concerned with those who wished to establish a second legal marriage.

The Bill was so drafted that, under cl. 1 (2), the husband, being legally responsible for the maintenance of his wife and children, might not even claim to have his petition heard unless he could satisfy the court that he had fulfilled his financial obligations towards his family. In other words, a woman separated from her husband and children separated from their fathers would be no worse off financially under the Bill, but might be better off, so far as maintenance was concerned. In fairness, cl. 2 also provided that if a decree should be granted, the means of the woman should also be put into the pool and placed at the disposal of the court.

She went on to say that to insist that the whole of our divorce procedure should be based upon the distinction between the guilty and the innocent parties was wrong. Where the fault was fifty-fifty, as it so often was, the Bill provided a decent solution, without branding one party and exonerating the other.

Mr. R. F. Wood (Bridlington) moved an amendment for the rejection of the Bill which, he said, would further weaken the marriage contract and invoked a new principle whereby grounds for divorce might be established where no marital offence had been committed.

The Attorney-General, Sir Hartley Shawcross, said that the Bill dealt in isolation with only one of the many problems concerned. There was the uncertainty of the law as to non-consummation and nullity. There was the question of the extent to which a refusal of marital relations might cause grounds for divorce. There was uncertainty about the law as to the artificial insemination of women and the bastardization of children. There was the question of divorce on grounds of insanity where the insane spouse was not detained compulsorily but was in some voluntary hospital for treatment. There was the question of the discretionary powers to divorce giving rise, amongst other things, to the activities of the King's Proctor.

It was the view of the Government that it would be unwise to legislate about any of those matters in isolation from the rest, without a full study of the extent of the problem and of the implications of dealing with any particular aspect of the problem in isolation. They were all grave, social problems. They required great study and great consideration before legislation was passed in regard to them. It was about forty years since a Royal Commission had studied them and reported upon them, and since that time there had been wide social and economic changes in regard to the outlook upon such matters.

He suggested that the best way of dealing with the present proposals would be to recommend the appointment of a Royal Commission to study the whole field of the marriage laws, and he suggested that if the Bill and the amendment were withdrawn, the Government would make that recommendation.

After the vote had been taken and the Bill given a Second Reading, the Attorney-General told questioners that the question of a Royal Commission would have to be reconsidered.

MAINTENANCE ORDERS

Mr. R. W. Sorensen (Leyton) asked the Home Secretary at question time whether he would consider legislation to embody reciprocal arrangements between this country and other powers in regard to the enforcement of maintenance orders, such as now existed in Commonwealth territories.

Mr. Chuter Ede replied that a draft convention for the recognition and enforcement of maintenance obligations was to be discussed shortly at the Social Commission of the United Nations. The arrangements under the Maintenance Act, 1920, which obtained in the Commonwealth territories depended upon the similarity of the laws in force in those territories, and the question whether those arrangements or any alternative arrangements could be made in respect of other countries having dissimilar laws raised very difficult problems and would need very careful consideration.

J.P.s ACT

In written Parliamentary answers, Mr. Ede states that no dates have yet been fixed for the coming into force of the various provisions of Part III or of ss. 19 and 22 of the Justices of the Peace Act, 1949.

PERSONALIA

APPOINTMENTS

Mr. Christopher Albert Taylor has been appointed assistant official receiver for the bankruptcy district of the county courts of Aylesbury, Brentford, Chelmsford, Edmonton, Hertford, St. Albans, Southend and Brentwood; the bankruptcy district of the county courts of Croydon and Woolwich, Guildford, Kingston (Surrey) and Wandsworth; and also for the bankruptcy district of the county courts of Reading, Banbury, Newbury, Oxford and Windsor.

Mr. David C. Cuthill, water engineer to the North East Derbyshire joint water committee, has been appointed water engineer to the newly formed Island Water Board on the Isle of Wight. Mr. Cuthill is forty years of age.

Mr. G. I. Moon, assistant superintendent at the Seamen's Hostel, Grimsby, has been appointed temporary probation officer to the Bradford city justices. He takes the place of Mr. R. H. Brueton, who has resigned to take up an army appointment.

Miss M. A. McGarey has been appointed a full-time probation officer to the Bradford city justices in place of Miss E. R. Marks who is to take up an appointment as probation officer in the metropolitan magistrates' courts area.

Mr. R. A. F. Cooks, a probation officer at Leicester since 1949, is resigning his appointment in order to take up a position as superintendent of the new Leicester hostel for boys. Mr. Cooks has held previous appointments as a probation officer at Sunderland and in Warwickshire.

OBITUARY

Mr. William Thomas Snell died at Bournemouth on March 5 at the age of eighty-one. He was called to the Bar by Gray's Inn in 1910 and joined the Western Circuit, being clerk of assize from 1934 to 1945. In 1928 he was appointed Recorder of Andover and held this post for twenty years. He was appointed a J.P. for the county of Dorset in 1934.

SUMMER TIME

"Time does not run in the Long Vacation."
O how the maxim lies!
I've always found in the Long Vacation
It simply flies.

J.P.C.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 6

RAG FLOCK AND OTHER FILLING MATERIALS BILL, read 2a.

Thursday, March 8

TOWN AND COUNTRY PLANNING (AMENDMENT) BILL, read 3a.
WORKMEN'S COMPENSATION (SUPPLEMENTATION) BILL, read 2a.

HOUSE OF COMMONS

Monday, March 5

WORKMEN'S COMPENSATION (SUPPLEMENTATION) BILL, read 3a.

Wednesday, March 7

BRITISH TRANSPORT COMMISSION BILL, read 2a.

Friday, March 9

MATRIMONIAL CAUSES BILL, read 3a.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 15.

MORE ABOUT CLUBS

A sixty-five year old widow who was unable to attend in court because of ill-health, was summoned to appear before the Kingston-upon-Thames Borough Justices to answer two charges. The first alleged that on various named dates she unlawfully sold intoxicating liquor, without a justices' licence authorizing her so to do, contrary to s. 65 of the Licensing (Consolidation) Act, 1910. The second charge alleged that she had supplied intoxicating liquor during other than permitted hours, *viz*, after 10.30 *p.m.*, contrary to s. 4 of the Licensing Act, 1921. The defendant, through her solicitor, pleaded guilty to both charges. In addition, a summons had also been served on the secretary of the club, a sister of the defendant, to show cause why an order should not be made directing the club to be struck off the register on the following grounds: 1. that the club was not conducted in good faith as a club, and that it was habitually used for an unlawful purpose; 2. that illegal sales of intoxicating liquor had taken place on the club premises, and 3. that the supply of intoxicating liquor to the club was not under the control of the members or the committee appointed by the members.

For the prosecution, it was stated that no regard whatever was paid to licensing hours during which plain-clothes police officers were keeping observation in the club, and that members and others entered the club after the normal closing hours and bought and consumed intoxicating liquor until the early hours of the following day. It appeared, said prosecuting solicitor, to be in the nature of an unlicensed public house run solely for the benefit of the defendant. The defendant had told the chief inspector of police that she alone bought and controlled the sale of intoxicating liquor for the club, and took any profits. There was no committee appointed for this purpose.

The defendant was fined £25 on the first charge, £20 upon the second and ordered to pay £29 costs.

Defending solicitor asked that the application for striking off should be adjourned, saying that the profits of the club, about £300 a year, constituted the defendant's only income. The justices did not accede to his request, but struck the club off the register and disqualified the premises for six months.

COMMENT

In the article "A raid on a club" which appeared in last week's issue, the writer dealt fully with the provisions of s. 65 of the Act of 1910, and generally with the difficulties which may arise under this section in the case of a proprietary club unless a wine committee is appointed. It will be recalled that the sections of the Act of 1910 which deal specifically with clubs are ss. 91 to 99 inclusive, and it may be helpful to look briefly at some of these.

Section 91 throws on the secretary of every club occupying premises habitually used for the purposes of a club and in which intoxicating liquor is supplied to members or their guests the duty of registering the club with the clerk to the justices. In the case of a proprietary club this duty is thrown on the proprietor.

There is no definition in the Act of the term "club." It is used throughout the Act in its popular meaning, and it is a question of fact to be decided in each case as to whether the association in question is a "club." It is worth noting that *Humphrey v. Tudgay* (1915) 79 J.P. 93, is authority for the proposition that a club registered in respect of its own premises may on a special occasion meet elsewhere without the necessity of further registration, and intoxicating liquor may properly be taken to such place and supplied to members.

Section 92 prescribes the mode of registration. In all parts of the country, except London, clerks of petty sessional divisions have to keep a register of all clubs within their divisions. In London, by s. 98, the duty of keeping the register is cast upon the clerks of the metropolitan magistrate's courts. The section also prescribes what details have to be supplied when effecting registration and subs. 3 provides for an annual return in January of each year. It should be clearly appreciated that the mere fact of registration will not prevent a prosecution under s. 65 of the Act of 1910, if the club is a proprietary one and no wine committee has been formed, or else is a mere sham so that the supply of liquor is, in truth, a sale to persons having no previous ownership in it, and not a mere transfer between co-owners.

The Defence (General) Regulations, 1939, contained an excellent provision giving the police power to object, on prescribed grounds, to the registration of new clubs, and for an aggrieved applicant to appeal to a court of summary jurisdiction. This provision has been kept in force to date, with certain modifications, and many will hope that some similar provision will ultimately become embodied in the fabric of the permanent law of the country.

Section 93 provides for penalties if intoxicating liquor is kept, supplied or sold in an unregistered club, and s. 94 prohibits the supply of intoxicating liquor in a club for consumption *off* the premises except to a member *on* the premises. The effect of this section is that the club member must, if he wants intoxicating liquor for consumption at his home, apply for it personally at his club, and he is not able to send a messenger for it.

Section 95 specifies eight grounds upon which a court of summary jurisdiction may make an order directing the club to be struck off the register; the case reported above specifies three of the grounds and the others should be studied carefully by all persons running proprietary clubs or undertaking employment as club secretaries. Subsection (4) of the section provides that the court may, in addition, disqualify the premises for being used as club premises, in the first case for a period of twelve months, and in the case of a second or subsequent order, for a period not exceeding five years.

This latter provision which may result in considerable hardship to persons not directly concerned in misconduct at the club premises is usually only invoked in really bad cases. The more usual course is to adjourn the application to "strike off" for a period of months, to see if the members and management mend their ways.

Section 96 enables a justice to grant a search warrant to a police constable to enter club premises on being satisfied that there is reasonable ground to suppose that the club is so managed or carried on as to constitute a ground for striking it off the register. The provisions of this section should be considered in conjunction with those of s. 82 of the Act, which entitle a justice to grant a search warrant in any case in which he is reasonably satisfied that there are grounds for believing intoxicating liquor is being sold or being kept for sale by retail contrary to law.

(The writer is much indebted to Miss Joan Adair, B.A., Clerk to the Kingston-upon-Thames Borough Justices, for information in regard to this case.) R.L.H.

PENALTIES

Barrow-in-Furness—January, 1951—larceny (two defendants)—each fined £5. Two young women in a shop when an electricity power cut occurred. Taking advantage of this they stole tinned meats to the value of 9*s*.

Wrexham—January, 1951—failing to maintain wife and child—three months' imprisonment. Defendant, a former miner, stated that he had been prevented from restarting work as a miner because "he had lost time" when he worked previously. Since defendant's last appearance before the court in June, Assistance Board had paid wife and child £53.

Southampton—January, 1951—attempting to evade customs duties on a camera and case—fined £20. Defendant, on being questioned on arrival from New York, first said she had taken the camera to America with her; she later said that her sister in America had sent it to her a year ago and that duty had then been paid on it. Both statements were wholly false.

Grimsby—January, 1951—driving without due care and attention—fined £3. Defendant, a seventy-six year old jeweller, had driven for fifty-two years without a previous accident.

Oxford—January, 1951—assault—fined £4. To pay £1 costs. Defendant informed a railway clerk that he had lost his return ticket from Paddington to Taunton and was told that if he established his identity with the police he might receive help to get home. Defendant resented this advice and when told to leave struck the clerk knocking his spectacles off, he then threw timetables and two chairs at the clerk.

Dudley Juvenile Court—January, 1951—breaking and entering (two charges)—two years' probation. To make restitution for property not recovered. To pay 17*s*. costs. Defendant, a twelve year old boy, on first occasion took sundry articles value 13*s*. 8*d*. and on second occasion took some toy soldiers which he threw down a sewer the same afternoon because he was frightened of anyone seeing them.

Burnham-on-Sea—January, 1951—stealing a bicycle value £6—fined £10. Defendant, a twenty year old police constable, stated he took the cycle to ride when on night duty as he suffered from nerves and was afraid the other constables would laugh at him if he told them he feared night duty.

Leeds—February, 1951—assaulting a fifteen year old step-daughter and causing her unnecessary suffering—fined £20. Defendant, a forty-six year old engineer, married the girl's mother as his fourth wife and was on bad terms with the girl. He blacked the girl's eyes causing a swelling over the bridge of her nose.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Land—*Easement—Spring water and surface water carried off by defined channel—Increase of burden—Possible statutory rights.*

In December, 1949, the owners of an ironworks fronting the county road submitted a proposal to the county council for the disposal of surface water drainage from extensions to roads and workshops at their works. This envisaged a connexion into an existing road surface water catchpit situate in the verge of the county road, which is connected by a nine inch pipe underneath the road to a twelve inch pipe which crosses an adjoining sports field and thence discharges into a brook. The twelve inch drain was laid by the county council in 1932 and the nine inch drain has been maintained as a road surface water drain for at least forty years, its origin being unknown. It is known to take the water from a spring originating in an orchard near the ironworks and owned by the company which *en route* through the works is used as scrubbing water in a gas producer plant. During the 1939-45 war, large additions were made to the ironworks and the highway authority complained about the added surface water, but the company pleaded war necessity and there the matter rested. In 1946 additions were made to the ironworks and roads were surfaced, the effect being that a much greater quantity of water found its way into the council's nine inch drain.

I shall be glad to have your opinion whether the proprietary interest of the county council by virtue of s. 29 of the Local Government Act, 1929, would be sufficient to justify the institution of proceedings for an injunction to restrain the company from passing this additional water into the council's drain or whether some other statutory remedy is available. C.INQUISITOR.

Answer.

The end of the query suggests that the county council's advisers are approaching the problem as if two private landowners were concerned about an easement. In that case, it might be arguable that the easement covered no more than the water from the spring, *plus* surface water running off from roofs and paved surfaces of the extent existing when the easement was acquired—though we are not to be taken as saying, upon the case law concerning easements, that the argument would prevail. This approach, however, ignores s. 34 of the Public Health Act, 1936. The company may have had a right under s. 21 of the Public Health Act, 1875, to pass all their surface water into the nine inch pipe, if (as is not improbable) this belonged to the district council at one time. If the matter came into court (which would be regrettable) it would be necessary to find the history of the connexion from the works to the nine inch pipe; distinctions might be drawn between the spring water and surface water, and it might be found in the end that the company had an easement, if not a statutory right, for all the water in question.

2.—Larceny—*Restitution—Proceeds of offences.*

I shall be greatly obliged if you will give me the benefit of your views on the undermentioned points:

X is charged on eighteen counts with larceny (as a servant) of goods belonging to his employer amounting in value to several hundreds of pounds. The goods have vanished—being sold by the accused. The thefts extended over a period of two years. During such period his only income was his weekly wages and yet (without doubt from the proceeds of his thefts) he has become possessed of an excellent motor car and he has also had two houses built.

Assuming he is convicted whether summarily or on indictment, to what extent can restitution be obtained and whether any of the property mentioned can be attached?

Section 45 of the Larceny Act, 1916, gives a court power to award writs of restitution "for the said property." By s. 46 "property" includes not only any property which has been originally in the possession—of any person but also "any property into . . . which or for which the same has been converted . . . and anything acquired by such conversion whether immediately or otherwise." *R. v. Justices of the C.C. Court* (1886) 18 Q.B.D. 314, was decided under the Larceny Act, 1861, s. 100.

The last words of the similar (1916 Act) s. 46 are apparently capable of wider interpretation than s. 100.

The only form of writ of restitution which I can find is that in the appendix to the *High Court Annual Practice*. Do you think such a form is applicable in such a case? Can it be issued by either a court of summary jurisdiction, or quarter sessions?

I assume it should be directed to the police and not to the sheriff? S.T.A.

Answer.

The difficulty here seems to be that of proving that the car and the houses were the proceeds of the thefts. We do not think it sufficient to say that they must have been, simply because it is thought that the prisoner had no other means.

If it could be proved that they were the proceeds of the offences, any convicting court could make an order of restitution. It is clear that a court of assize can enforce its order by attachment, *Archbold* (32nd edn.), p. 290, but apparently this does not apply to quarter sessions or magistrates' courts and they cannot issue writs of restitution.

In *Archbold*, at p. 289, it is said: "In cases of difficulty or complication it is usual to refuse an order and leave the prosecutor to his other legal remedies for recovery of his property." This seems to be the best course in this case.

3.—Magistrates—*Re-opening case—Technical flaw in prosecution's case—Submission of "no case"—Should court allow prosecution to call necessary further evidence?*

A, a bus conductor, was charged with failing to take all reasonable precautions to ensure the safety of passengers entering the vehicle contrary to reg. 4 of the Conduct of Drivers, Conductors and Passengers Regulations, 1936.

The information was laid by B, superintendent of police, who was not present in court, and the case for the prosecution was conducted by a police inspector. The evidence called by the prosecution revealed *prima facie* that the conductor had neglected to take any precaution and as a result an old lady was thrown on to the roadway. The case for the prosecution having been closed the solicitor for the defendant submitted that as it had not been proved that the informant was a person authorized to institute proceedings as required by the Road Traffic Act, 1930, s. 95, the case must be dismissed. On inquiry the inspector of police stated that whilst he knew the informant was so authorized he did not have the authority in court.

I advised the justices that they were in order in allowing the prosecution to re-open the case to prove the authority if it was available but as it was not I could not say if the authority could properly be admitted if the case was adjourned to another day to enable it to be produced.

As, on the face of it, it was a bad offence and the justices did not feel disposed to dismiss the case on what they regarded as a mere legal technicality, they adjourned the case stating that they wished to consider whether it was necessary to prove the authority formally.

I think it is quite clear that the authority of the informant to institute proceedings must be proved and I anticipate that the prosecution will be prepared to do so on the adjourned hearing.

I have referred to the article at 110 J.P.N. 616 and see that both the opinion of the writer and the judgment of Cave, J., in *Hargreave v. Hilliam* (1894) 58 J.P. 655, indicate that a case may be re-opened to hear any evidence which is there ready to be tendered or which is available then and there.

Having regard to the fact that the evidence was not there ready to be tendered on the original hearing it would seem that it cannot be admitted on the adjourned day. Do you agree? JUY.

Answer.

We think on the authority of *Duffin v. Markham and Another* (1918) 82 J.P. 281 that the justices should allow the prosecutor to call the necessary additional evidence, granting an adjournment for this purpose if necessary.

We discussed the matter of "closed case" in an article at 105 J.P.N. 60.

4.—National Insurance (Industrial Injuries) Act, 1946—*Articled pupils—Insurability.*

In 1948 the highways surveyor of my authority entered into articles with two pupils in his department. No premium was paid by the pupils and the articles were executed on the standard form approved by the Institution of Municipal and County Engineers for the practical training of pupils in the local government service. The Ministry of National Insurance contend that the pupils are in insurable employment under contracts of apprenticeship, and have demanded over two years' arrears of contribution from the county surveyor. I agree with the Ministry that the pupils are employed by the surveyor, but I do not agree that they are employed under contracts of apprenticeship. There is no definition in the 1946 Act or the prior insurance statutes,

and I rely on the case of *Re Russell, ex parte Prideaux and Rush* (1838) 2 Jur. 366, which states there is a clear distinction between an apprentice in a trade and an articled clerk. A note in 22 *Halsbury* 120 states, however, that a solicitor's articled clerk was included in the term "apprentice" for the purpose of a poor law settlement under the Poor Law Relief Act, 1691 : *R.* v. *Edingale (Inhabitants)* (1830) 10 B. & C. 739 and *R.* v. *Wooldale (Inhabitants)* (1844) 9 J.P. 85. I can find no more recent authority and I have not seen full reports of the old cases referred to. It has also seemed to me and my clerk tells me that many of the legal text books support this opinion that the term "apprentice" applies to those apprenticed to a trade or artificer, and does not apply to pupils articled to professional persons.

I shall be glad to have your opinion as to whether

(*a*) The pupils are employed by the surveyor ;

(*b*) They are apprentices within the meaning of the 1946 Act and so in insurable employment. ADAM.

Answer.

In *R.* v. *Laindon* (1799) 8 T.R. 379, Grose, J., said that an apprentice was a person who by contract was to be taught a trade, deriving the word from *apprendre*. It is true that in *Re Fussell, supra*, Lord Cottenham in another context (discharge of indentures upon the master's bankruptcy) distinguished a trade from a profession : the bankrupt professional master has since been brought into line by the Bankruptcy Act, 1914, and the Solicitors Act, 1932. The context and the reason of the matter must be considered. In the Family Allowances Act, 1945, an apprentice is defined to be a person undergoing full-time training for any trade, business, profession, or office, employment, or vocation, and not in receipt of earnings which provide him, wholly or substantially, with a livelihood. Looking to the *nexus* between that Act, the National Insurance Act, 1946, and the Act here in question, we think the meaning is probably the same. For the purposes of the Acts of 1946 it makes no difference to the merits of the lad's insurability, whether he is learning to be a surveyor, a shopkeeper, or a shoemaker. This was the *ratio decidendi* of the poor law cases, *supra*, and of *St. Pancras* v. *Clapham* (1860) 24 J.P. 613, which related to a solicitor's articled clerk, and is directly contrary to *Re Fussell*. Settlement was a protection, gained by serving a term in the parish under indentures ; why deprive the professional man's pupils of that protection, or of the modern protection of national insurance ?

5.—Road Traffic Acts—*Quitting car—Stopping engine and applying brake—Form of summons and how many possible offences.*

The Motor Vehicles (Construction and Use) Regulations, 1947, reg. 82 (3), says a person may not quit a "vehicle without having stopped the engine and, where the vehicle is fitted with a brake capable of being set, having set the brake . . ." etc.

Is this one offence requiring both actions to be taken, in which case one action completed without the other does not create the offence ; or are they separate offences which should be laid in separate informations ?

I am informed that the practice here has been to allege both matters in the summons as one offence, and although only one of them is proved, the justices are quite content to convict. This, in my opinion, is quite wrong. JIMP.

Answer.

We have dealt previously with this matter, *see* 113 J.P.N. 685 P.P. 11, and the other P.P.'s therein mentioned.

We think that reg. 82 (3) clearly requires anyone in charge of a car who quits it to apply the brake *and* to stop the engine, and unless he does *both* he has failed to comply with a regulation in Part III and has brought himself within reg. 94. Failure to do either or both constitutes only one offence.

We think it is in order to allege in a summons a failure to comply with reg. 82 (3) by quitting the vehicle without stopping the engine and setting the brake, and that a conviction can properly follow on proof that there has been a failure to do either or both. But since the prosecution knows what it hopes to prove we think that it is much clearer, when there is only one failure, to allege only that failure in the summons. To refer to both may make a defendant prepare to meet a matter which is not going to be alleged against him.

6.—Summary Jurisdiction—*Criminal Justice Act*, 1948, *s.* 8 (1) *and* (2) *—Fresh conviction after conditional discharge—Who should lay information before a justice ?*

X appeared before a court of quarter sessions for felony and an order for conditional discharge for twelve months was made. Seven months later he appeared before a magistrates' court in another district for a vagrancy offence and was committed to prison for three months. The breach of the conditional discharge order was reported to the clerk of the peace for the county where X was originally convicted, and he directed that the question as to what action should be taken was one to be decided by the committing justices in the first instance.

The matter was referred to the clerk to the committing justices who quoted s. 8 (1) and (2) (*c*) of the Criminal Justice Act, 1948, in saying that his justices could not take any action until information for a summons or warrant was laid before them as provided by the Act.

The question now arises "who should lay the necessary information ?" In cases where a probation order has been made it is submitted that the probation officer supervising would lay the information for breach of such probation, but in cases of "conditional discharge" should the police lay the information and prove the latter conviction or should a notification to the clerk to the committing justices, with a certified copy of the latter conviction suffice for the issue of the necessary process. Your valued opinion would be appreciated. JAN.

Answer.

The Act does not state who is to lay such an information, but in our view in the case of a probation order either the probation officer or a police officer can do so, and in the case of a conditional discharge it should be the duty of the police or of any other prosecuting authority concerned in the matter. We think that in order to comply with the last paragraph of s. 8 (1) it is essential that an information should be laid.

We think it should be pointed out that s. 6 and not s. 8 provides the procedure for dealing with a failure to comply with the requirement of a probation order. Section 8 is concerned only with offenders who are convicted of fresh offences during probation or conditional discharge.

7.—Town and Country Planning—*Prohibition order under Act of 1943—Repeal—Enforcement of control.*

Before the appointed day under the Town and Country Planning Act, 1947, this council took action under s. 5 of the Town and Country Planning (Interim Development) Act, 1943, by making an order prohibiting a certain use of land, and giving notice that the council would reinstate the land. The council asked the owner, in his own interests, to reinstate the land. The owner, under pressure from the council, has discontinued the use but the reinstatement (a long and costly process) is proceeding very slowly.

1. Does the repeal of the 1943 Act render the council's order under s. 5 no longer enforceable ?

2. If the order is enforceable can the council (no longer planning authority) :

(*a*) reinstate the land at the owner's expense ?

(*b*) prosecute the owner under subs. (5) if the prohibited use is resumed ? A.O.S.

Answer.

1. Yes, the order is not saved by the repeal section of the Act of 1947. Equally, prosecution under s. 5 (5) is no longer possible.

2. This question does not arise in the form in which you put it, but *see* s. 75 of the Act of 1947. The prohibited use was a contravention of previous control, as defined by subs. (9). The position should be brought to the notice of the new planning authority.

8.—Transport Act, 1947—*Charges—Representative body—Local authority.*

A difficult question has arisen concerning the meaning of s. 81 of the Transport Act, 1947, which relates to the *locus standi* of local authorities as regards charges schemes. The expression "local authority" is defined in s. 125. The definition does not include county district councils ; but it is qualified by the words "except so far as . . . the context otherwise requires." An object of s. 81 and preceding sections is to confer a right to make representations. Such a provision should not be construed restrictively. One ought to have regard to the broad intention of the provision. In s. 81, not only is the word "include" used, but also the expression "any local authority within whose area any persons using those services are resident." If the definition in s. 125 is applicable, the word "any" which precedes "local authority" in s. 81 is inappropriate. But the word "any" is used, and, in the context, is not an apt way of saying, in effect, "a local authority as defined in this Act." When an Act of Parliament confers rights upon those who have interests one ought to hesitate before placing a limiting interpretation on the language used. ARIS.

Answer.

Context, in the common form exception, *supra*, with which s. 125 begins, is a tricky horse to ride, all the more so in this case because "local authority," if not limited in s. 81 by the definition in s. 125, is of uncertain meaning : the two most important local government statutes (the Local Government Act, 1933, and the Public Health Act, 1936) contain definitions which differ. It is easy to say that the council of a non-county borough ought to have a *locus standi* under ss. 79 and 80, but is a parish council so obvious ? We are therefore by no means confident, but on the whole we agree that in s. 81 the meaning need not be taken as limited by s. 125.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

METROPOLITAN BOROUGH OF POPLAR

Appointment of Legal Assistant in the Town Clerk's Department

APPLICATIONS for this post are invited from solicitors of at least two years' standing, on Grade A.P.T. VIII in the National Scheme of Conditions of Service. The duties will include conveyancing, preparation of contracts and agreements, and dealing with the procedure associated with compulsory acquisition of land. Previous local government experience will be an advantage. Forms of application, with full particulars of the conditions of appointment, can be obtained from the undersigned, by whom applications must be received not later than April 4, 1951.

S. A. HAMILTON,
Town Clerk.

Poplar Town Hall,
Bow Road, E.3.
March 9, 1951.

EASTERN ELECTRICITY BOARD

Law Clerk

APPLICATIONS are invited from Law Clerks, with some experience in conveyancing, for an appointment in the Secretary's Office.

The salary will be in accordance with Grade III of the National Joint Council Agreement of March 23, 1950, *i.e.*, £450 × £20 to £510 per annum. The commencing salary within the scale will be fixed according to experience. The conditions of service will be in accordance with agreements made from time to time by the appropriate negotiating bodies.

The successful candidate will be required to contribute to a Superannuation Scheme, and may be required to pass a medical examination.

Applications, stating full details of age, education, experience and present position and salary, should be sent to the Secretary, Eastern Electricity Board, Wherstead, Ipswich, Suffolk, so as to be received not later than Tuesday, April 3, 1951.

March 13, 1951.

WARWICKSHIRE COMBINED PROBATION AREA

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time probation officer (male) to serve in the Borough of Sutton Coldfield and in the Coleshill and Solihull divisions.

The appointment will be subject to the Probation Rules and the salary will be in accordance with the prescribed scale. Applicants must be between the ages of twenty-three and forty years, except in the case of persons qualified under r. 44.

The selected candidate will be paid an allowance for the use of his own car or, alternatively, a staff car will be provided. He will also be required to pass a medical examination.

Applications, on forms obtainable from the undersigned, must be received not later than April 9, 1951.

L. EDGAR STEPHENS,
Clerk of the Committee.

Shire Hall,
Warwick.
March 12, 1951.

COUNTY OF MIDDLESEX

Willesden Petty Sessional Division

WHOLE-TIME Assistant to Clerk to Justices, experienced in keeping magisterial accounts, issuing process, and general duties of Clerk to the Court. Commencing salary £420 per annum (scale £420 × £25—£520 × £30—£550 per annum). Pensionable subject to medical fitness. Applications with copies of not more than three recent testimonials must reach the undersigned by March 31, 1951 (quoting J.171 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the Standing Joint Committee.

Guildhall,
Westminster, S.W.1.
March 8, 1951.

GLOUCESTERSHIRE (COMBINED AREAS) PROBATION COMMITTEE

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must be not less than twenty-three nor more than forty years of age, except in the case of whole-time serving officers.

The appointment will be subject to the Probation Rules, 1949 and 1950, and the salary in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination.

Applications, stating date of birth, present position, previous employment, qualifications and experience, together with copies of two recent testimonials, must reach me not later than March 31, 1951.

GUY H. DAVIES,
Clerk of the Committee.

Shire Hall,
Gloucester.

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